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C O N F I D E N T I A L SECTION 01 OF 03 BEIRUT 000959

SIPDIS

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SUBJECT: ACTIVE CARETAKER GOVERNMENT POLITICALLY AND
CONSTITUTIONALLY UNFEASIBLE

REF: BEIRUT 933

Classified By: Ambassador Michele J. Sison for reasons 1.4 (b) and (d).

SUMMARY

1. (C) Although press reports have speculated that Lebanese President Michel Sleiman considered calling into session the caretaker cabinet headed by caretaker Prime Minister Fouad Siniora, constitutional experts and other Embassy contacts say public conjecture on the issue is a mere political maneuver by Prime Minister-designate Saad Hariri to pressure opposition parties to cooperate on government formation. Convening the cabinet, except in exceptional circumstances, would be unconstitutional as well as unpalatable to most Lebanese, all contacts assessed, and a review of precedent suggests that a true caretaker cabinet has met only once in Lebanese history. Lebanon's newly elected parliament, in contrast, has the authority to convene at any time to elect committee members. End summary.

CONSTITUTION AND PRECEDENT
LIMIT CARETAKER AUTHORITY

2. (SBU) As government formation has remained deadlocked, the local media have reported that President Sleiman might rely on caretaker PM Siniora until the opposition concedes to the formation of the government Hariri wants plan. In both public and private, Hariri has repeatedly asserted his patience and willingness to out-wait the opposition despite the fact that Lebanon's constitution -- which places no time limit on cabinet formation -- and historical precedents limit the role that a caretaker government may play. Lebanon's original 1926 constitution failed to enumerate the specific obligations of a caretaker cabinet, so the issue was first addressed in 1969 by the State Consultation Council in a ruling that a caretaker government must distinguish between usual and unusual tasks and may only make "fundamental decisions" in "extraordinary cases." The amended post-Taif Accord constitution from 1990 restricts the authority of a cabinet that has not earned a vote of confidence by the parliament, has resigned, or is considered resigned to "the narrow sense of managing the normal routine," although the

constitution does not stipulate what that includes. Former Constitutional Council member and law professor Selim Jreisati speculates that a definition might be found in article 65 in the constitution, which details the issues that are considered "basic" to government operations, including amendments of the constitution, declaration of a state of emergency, war and peace, international agreements, and the annual budget.

13. (SBU) All caretaker cabinet sessions in Lebanese history occurred before the Taif Accord narrowed caretaker authority, both Jreisati and former Minister of Justice Bahije Tabbareh noted. Aside from the first caretaker session headed by Prime Minister Rashid Karami in 1969, Jreisati mentioned similar cases in 1975 and 1979. Additionally, Tabbareh pointed to the May 1973 decision of then-Prime Minister Amin el-Hafez to declare a state of emergency following an attack by Palestinians on the Lebanese army. Although el-Hafez was a new prime minister who had just formed his cabinet, he had not yet earned a vote of confidence by the parliament.

ACTIVE CARETAKER CABINET
POLITICALLY IMPOSSIBLE

14. (C) Whatever the constitutional possibilities, contacts across the political spectrum rule out Sleiman's convening the caretaker cabinet except in a case of pressing national concern. Amal-aligned MP Yassine Jabr raised the possibility of unofficial "ministerial meetings," but doubted that all caretaker ministers would attend. Tabbareh posited that only

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events such as the outbreak of widespread violence or war would warrant a caretaker session, and As-Safir editorialist Sarkis Naoum seconded Tabbareh's assessment while adding a country-wide loss of electricity as another justifiable reason for the caretaker cabinet to meet. Opposition-aligned former MP Marwan Abu Fadel said that relying on a caretaker cabinet to pressure the opposition is a non-starter that relatively weak President Sleiman would not risk given Lebanon's consensual system. Opposition Free Patriotic Movement (FPM) MP Alain Aoun echoed Abu Fadel's comments.

DISCUSSION PURELY POLITICAL

15. (C) Contacts suggest that March 14 is using the press debate on the rights of a caretaker cabinet as a way to pressure the opposition on cabinet formation. As-Safir's Naoum told poloff that Sleiman and Siniora's private discussion on the topic was purposely leaked to the press. Opposition political parties have expressed strong dislike for caretaker Prime Minister Siniora in the past; dangling Siniora as the alternative to a new cabinet formed according to the agreed upon 15-5-10 formula may be an attempt to goad FPM head Michel Aoun, in particular, into acquiescence, Naoum opined. At a minimum, he said, talk of caretaker cabinet sessions signals that March 14 is unwilling to stand idly by and wait for the opposition to give a green light to cabinet formation.

PARLIAMENT FREE TO CONVENE
BUT ALSO FROZEN

16. (U) In contrast to its caretaker counterpart, Lebanon's recently-elected parliament has the authority to meet at any time to elect committee members and chairs. Parliament entered an extraordinary session on June 20 and is scheduled to begin its normal session on October 15. Although the parliament will remain in its extraordinary session until a new cabinet is formed and earns a vote of confidence, in the meantime it is tasked with electing a speaker and selecting committees, normally a consensus-based process. Parliamentary committees, once formed, are free to debate,

amend, and make recommendations on draft legislation even though the full parliament cannot convene during its extraordinary session.

17. (C) Parliamentary Speaker Nabih Berri recently floated the idea of proceeding with the selection of parliamentary committees, but he has since backed off the proposal. In an August 18 meeting with the Ambassador, Berri worried that convening debate on committee appointments would destabilize the cabinet formation process, although Hariri later claimed to the Ambassador that it was his decision, not Berri's, to defer the process (reftel). Tabbareh suggested, however, that typical Lebanese power politics were again at play as Speaker Berri attempts to retain control of the finance committee following the defeat of his Maronite ally and committee chairman Samir Azar in the 2009 parliamentary elections. The FPM's Aoun confirmed that the FPM -- whose candidate defeated Azar in the elections -- is demanding the finance committee chair and is currently in negotiations with Berri. Although Berri is holding off on committee formation for now, Aoun predicted that pressure will increase after Ramadan to complete the process before October 15 since "parliament is a separate institution and should not be held hostage to cabinet formation."

COMMENT

18. (C) Convening the caretaker cabinet, absent a national emergency, would be seen as a provocative step by the opposition. As after the walkout of the Shia representatives from Siniora's previous government in November 2006, decisions taken by such a caretaker cabinet would be

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unenforceable and accused of illegitimacy. Discussion of the idea is likely a mere negotiation tactic on Hariri's part, one that the opposition appears to see through.
SISON